Business Reorganizations

By Milin Mehta
with inputs from Ms Vidhi Pooj

Amalgamations • Demergers • Slump Sale • Itemised Sale

Companies Act

Income-tax Act

GAAR

FEMA

PART 01 | REORGANIZATION FRAMEWORK

Process Walkthrough

NCLT Route & Fast-Track Mergers, Demergers under the Companies Act

Two Routes, Same Destination!

NCLT Route

Companies Covered

All types of companies – listed, unlisted, small, non-small

Arrangement

Applies for all types of compromises & arrangements – mergers, demergers, capital reductions, buy-back, debt restructuring

9-12 months time

A NCLT driven process, requiring significant time, depending on objections, regulatory approvals, IBC occupancy, etc.

Fast-track Route

Companies Covered

Permitted for specific types of companies – small cos., start-ups, holding-subsidiaries, etc.

Arrangement

Only mergers & demergers permitted

3-4 months time

Elimination of NCLT approvals, straight application made to RD, accelerates the process

NCLT Route – Process Flow

1
Board Approval
Scheme + Valuation + Board Approval

2
NCLT Application
File Scheme + All documents

3
Regulatory Notices
As per directions, issue notices to RD, RoC, IT, etc.

4
Convene Meetings
SH + Creditors Meetings (75% approval)

5
Address Objections
Respond to queries/objections of Regulatory authorities

6
Second Petition
File 2nd motion application with NCLT for scheme sanction

7
Issue Final Hearing Notice
Issue final hearing notice to all authorities

8
Final Order
NCLT pronounces Order + Filing of order with RoC

Typical Duration: 9–12 months, depending on objections, regulator responses & NCLT bench workload

Fast Track Route – Process Flow

1
Board Approval
Scheme + Valuation + Board Approval

2
Notice to RoC, OL & IT
File Scheme + Board approval with RoC (& OL if merger)

3
Member & Creditor Approval
Obtain creditor consents – 90% in value – written consents

4
File Scheme with RD
Scheme along with NOC of creditors and shareholders

5
Address Objections
RoC, OL, RD observations on the Scheme
Responses to the RoC, OL, RD

6
Final Order
RD to pass Order sanctioning the scheme

Typical Duration: 3–4 months, depending on objections, regulator responses

Fast-Track Reorganizations – Scope Expanded

Parameter	Pre-Amendment	Post-Amendment
Types of Arrangements	Mergers – specifically permitted Demergers – view was taken – permitted as per Sec. 233(12)	Demergers also specifically permitted now
Small Cos. & start-ups	Permitted	Permitted
Holding-Subsidiary	Only HoldCo. - WOS	All unlisted cos. (borrowings ≤ 200 crores, no repayment defaults)
Fellow Subsidiaries	Not permitted	Permitted
Listed Cos.	Not Permitted	Hold Co. – subsidiary permitted (if Transferor is not listed)
Inbound Mergers	Permitted w.e.f. 2024	Clarified that deemed RBI approval extended to fast-track inbound mergers

Fast-Track Reorganizations – *Pros & Cons*

Welcome Moves

- With elimination of 2-stage NCLT petition – can be completed within 3-4 months time
- Reduced time lapse between Appointed Date & Effective Date
  - Hence, reduced litigation & compliance costs
- Fast-track inbound mergers easier, backed by deemed RBI approval
- Fellow subsidiary mergers permitted

Practical Challenges

- The 90% approval threshold
  - Shareholders & creditors
  - Written consent not permitted – approval in meeting required
  - Practical difficulties where, transferee is listed
  - Proposition made to reduce this threshold to 75%
- Fast-track demergers denied tax neutrality
  - While MCA welcomed fast-track demergers, MoF denied tax benefits

PART 02 | CORPORATE RESTRUCTURING

Amalgamations

Definition, Tax Implications & Carry Forward of Losses

K C Mehta & Co LLP
Chartered Accountants

KSL NETWORK

Amalgamations - Definition

Section 2(1B) of the ITA 1961 / 2 (6) of ITA 2025

All Properties Vest

All properties of the Amalgamating Co. become properties of the Amalgamated Co.

All Liabilities Vest

All liabilities of the Amalgamating Co. become the liabilties of the Amalgamated Co.

$3/4^{th}$ Shareholders Continue

At least $3/4^{th}$ shareholders (in value) of the Amalgamating Co. become the shareholders of the Amalgamated Co. (Shares held by amalgamated co excluded)

Otherwise than as a result of acquisition of property pursuant to purchase or distribution after winding up

Amalgamations – Tax Implications

Sec. 47(vi) / 70 (e)

Hands of Amalgamating Co.

- Amalgamated Co. is an **Indian Co.**
- Applies only to inbound mergers, not outbound mergers

Sec. 56(2)(x) / 92 (3)(g)

Hands of the Amalgamated Co. & Shareholders

Specific exclusion provided

Sec. 47(vii) / 70 (f)

Hands of the Shareholders

- Amalgamated Co. is an Indian Co.
- **Consideration** is received **only** in the **form of 'shares'**

Sec. 2(42A) & 49(2) / 2 (101)

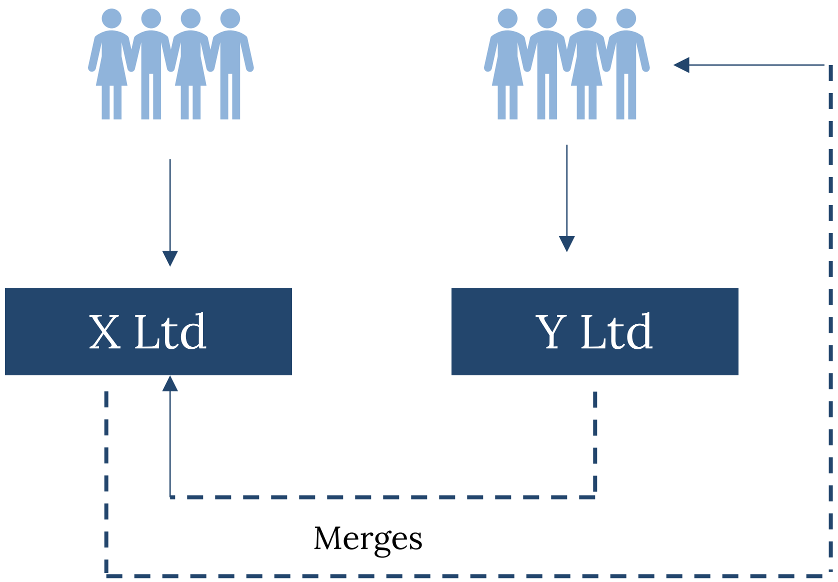
Period of Holding & Cost

- Period of Holding – From the date of acq. of shares of the Amalgamating Co.
- Cost of acq. = cost of acq. of shares of Amalgamating co.

Grandfathering U/s. 55 (2)(ac) / 90(8)(b)(i) of Listed Securities acquired prior to 1st February 2018 – "acquired"

Consideration to Shareholders – other than Shares

Facts	*The Issue*



Share exchange ratio – 9:1

Cash paid for fractional entitlements, 98% shares, 2% cash pay-outs

Section 47(vii) / 70(f)– Consideration to be only in the form of 'shares'

- **Does cash pay-out vitiate the exemption entirely?**
  - Fractional cash is incidental and mechanical – not substantive consideration
  - Courts distinguish a token cash-out from cash as real consideration for the transfer
  - Exemption survives – to the extent consideration in shares

- **If significant consideration in the cash or debentures or bonds?**
  - **Exemption withdrawn – taxable transfer –** *[CIT v. Gautam Sarabhai Trust [1988] 173 ITR 216 (Gujarat HC)]*

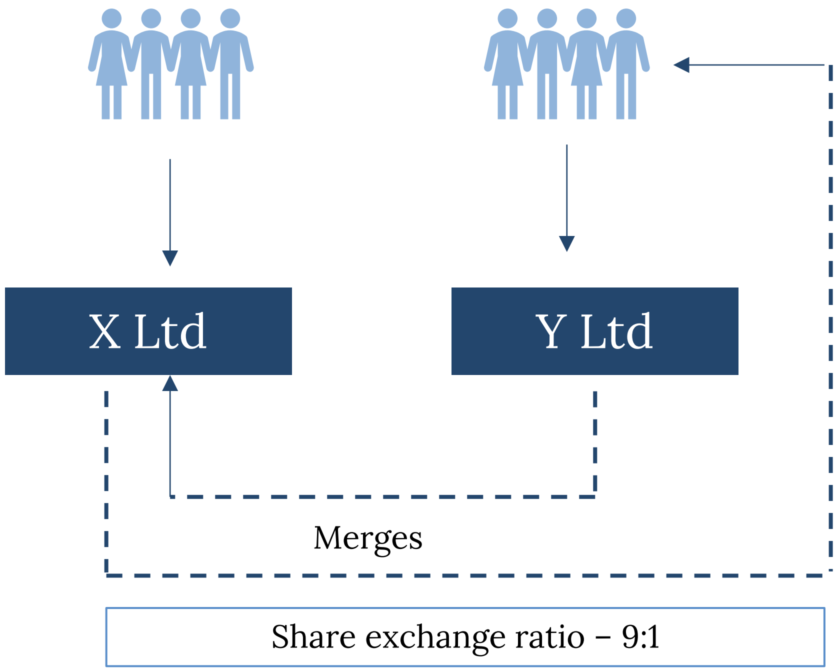
Non-Qualifying Amalgamations

Breach of any conditions of Section 2(1B) / 2 (6)?

- In the hands of the Shareholders – receiving shares of the Amalgamated Co. in lieu of shares of Amalgamating Co.
  - Transfer – extinguishment of shares - CIT v. Grace Collis (248 ITR 323) (SC) [2001]
  - Taxable Capital Gains
- In the hands of Amalgamating Co.
  - No consideration - Banca Sella S.p.A., In re [2016] (72 taxmann.com 360) (AAR New Delhi)
- Section 56(2)(x) / 92(2)(m) applicable in the hands of Amalgamated Company ?
  - ACIT v. Vertex Projects LLP [2023] 150 taxmann.com 109 (Hyderabad - Trib.) – Requires to be reconsidered

Amalgamations – Depreciation

Facts	The Issue



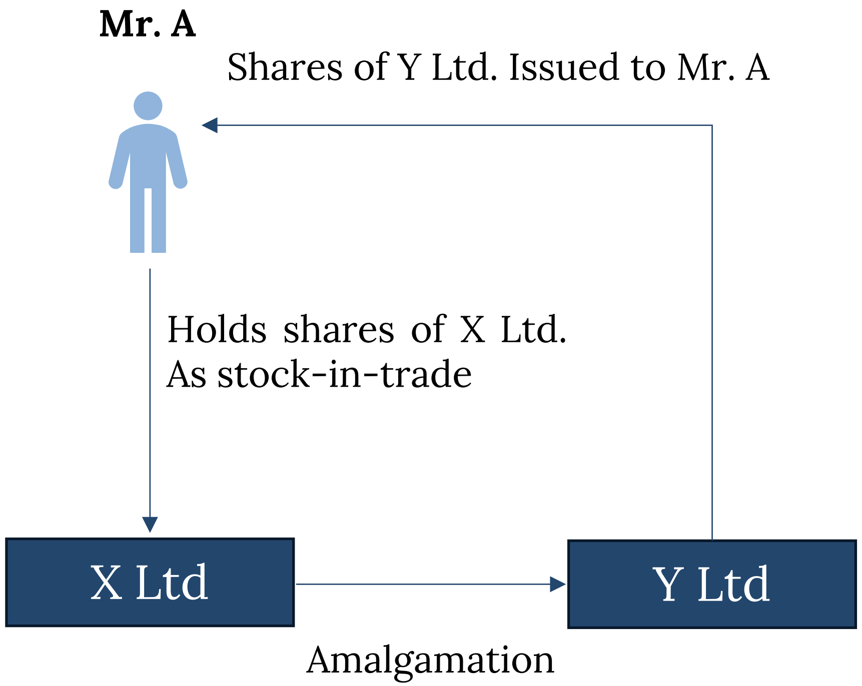
Pursuant to merger, X Ltd. recognizes Technical Know-how as an intangible under the Purchase Price Allocation

Section 32(1) – Fifth Proviso / 41 (2) & Depreciation on Intangibles

- Depreciation on WDV – proportionate on time basis
  - With effect from the 'Appointed Date' – Hon'ble Apex Court in case of CIT v. Marshall & Sons
  - Held – all incomes, expenses, assets liabilities transfer on 'Appointed Date' and not on the 'Effective Date'
- Goodwill Saga – Finance Act 2021 reversed decision of SC in case of CIT v. Smifs Securities Ltd
- Other intangibles – "… ***any other business or commercial rights of similar nature***"
  - *Delhi HC in case of Areva T&D v. ADIT & Ors. [2011-TII-17-Del-Intl]*
- Expl. 7 to Section 43(1) & Expl. 2 to Section 43(6) – Cost & WDV of assets acquired in amalgamation

Shares of Amalgamating Co. held as Stock-in-Trade

Facts	The Issue



Shares held as stock-in-trade are substituted for shares of the amalgamated company

- Sec. 47(vii) – not treated as 'transfer', which otherwise is liable to capital gains tax u/s 45
- Sec. 28 operates independently of 'transfer' – accordingly no protection
- 3-part test for tax liability
  - the old stock-in-trade ceases to exist;
  - the new shares have a definite, ascertainable value;
  - the assessee can immediately dispose of them to realise money – 'commercial realisability'
- Commercial realisability fails if – subject to lock-in or shares of a closely held company
- Charge crystallizes upon allotment of shares

SC in case of Jindal Equipment Leasing Consultancy Services Ltd. [[2026] 182 taxmann.com 219 (SC)

Appointed Date – *Not a specific date!*

- MCA vide Circular No. 09/2019 has clarified
  - Appointed Date need not mandatorily be a specific calendar date
  - Can be tied to occurrence of an event – eg: grant of a license by a competent authority or any conditions precedent
    - Valuation may be challenge in case of a future date
- Upheld the decisions of courts in case of
  - Marshall Sons & Co. (India) Ltd. v. ITO [1997] 223 ITR 809 (SC)
  - Equitas Finance Ltd., In re (Madras HC, 2016)
- Ante-Dating a Calendar Appointed Date has a limit
  - The scheme must justify the date, should not be against public interest
  - Choosing Date could be a tested under "GAAR"

Carry Forward of Losses – Section 72A(1) / 116 (1)

Conditions for Amalgamating Co.

- • Shipping Cos. • Industrial Undertaking • Hotels • Banking cos.
- Has been engaged in the loss generating business for > 3 years
- 3/4th Book value of assets held for > 2 years

Section 72A(1)

Conditions for Amalgamated Co.

- Company engaged in any business
- Continues the business of Amalgamating Co. for > 5 years
- Holds atleast 3/4th Book value of assets for > 5 years
- ▪ 50% of installed capacity is achieved before end of 4th year*
  ▪ Capacity maintained as such till 5th year [Rule 9C / Rule 60 of ITR 26]]

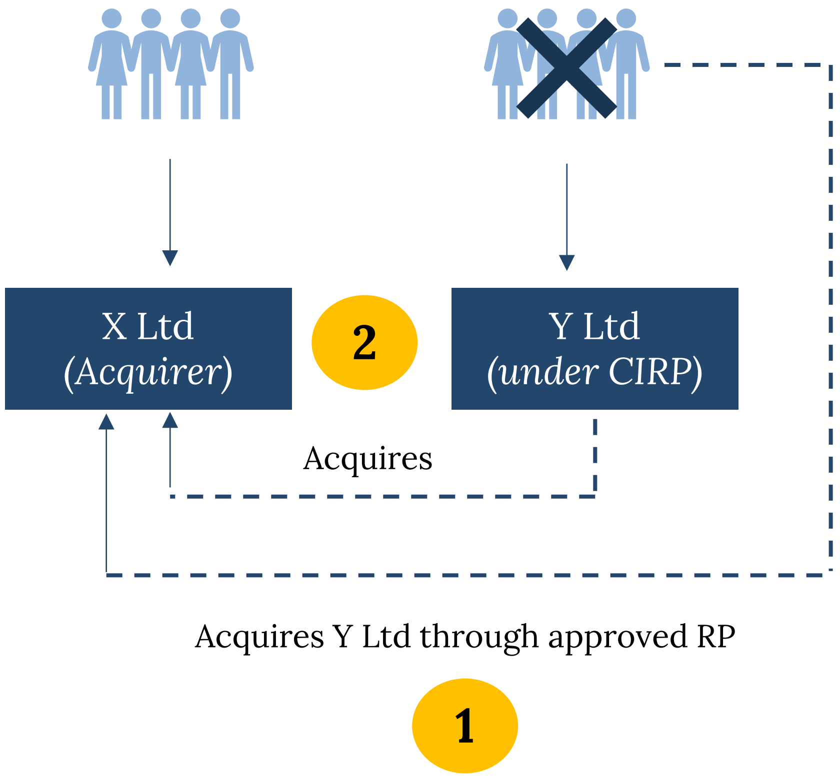
**Application may be made to the Central Govt. for relaxation of this condition*

Carry Forward of Losses – Sec. 72A & 79 / 116 & 119 (3)

- Business Losses 'Evergreening' Loop Closed
  - Finance Act 2025 has done away with carry forward of losses for a fresh 8 years period
- Has Finance Act 2025 done away with all benefits u/s 72A ?
  - Loss treated as "loss for the tax year in which amalgamation is effected" – Insertion of 72A (6B) / 116 (13)
  - Can the Amalgamating Co. set off business losses in the year of amalgamation against income under any other head?
- Carry Forward of Capital Losses?
  - Against – Mumbai ITAT in case of Clariant Chemicals (I) Ltd. Vs ACIT [2015]
  - In favour – Pune ITAT in case of Capegemini Technology Services India Limited vs DCIT [2022], reliance placed on SC decision in case of CIT vs. T. Veerabhadra Rao [1985] – de hors provisions of section 72 A / 116
- Carry Forward of losses in the Amalgamated Co. [Section 79]
  - If shareholding changes by > 51%, losses shall lapse, Unabsorbed depreciation survives Section 79
  - Section 79 triggers where ultimate beneficial owners remain the same ? – Registered owner v. Beneficial owner

Acquisitions through CIRP

Facts	The Issue



Carry Forward of Losses of Y Ltd, a company under CIRP (IBC)

- Section 79 applicable – change in shareholding > 51%
  - Provides exemption for companies acquired under IBC through an approved CIRP
  - Hence, change in shareholding – Sec. 79 not triggered
  - While losses continue to remain available, companies acquired through IBC offer a clean slate – all past litigations, demands extinguished
- Losses carried forward post-merger into X Ltd?
  - If it is an acquisition through a merger under the Resolution Plan?
- Whether Sec. 79 exemption applies to companies under IBC acquired through private bids ?

*"to a company where a change in the shareholding takes place in a previous year **pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016*** (31 of 2016)…"

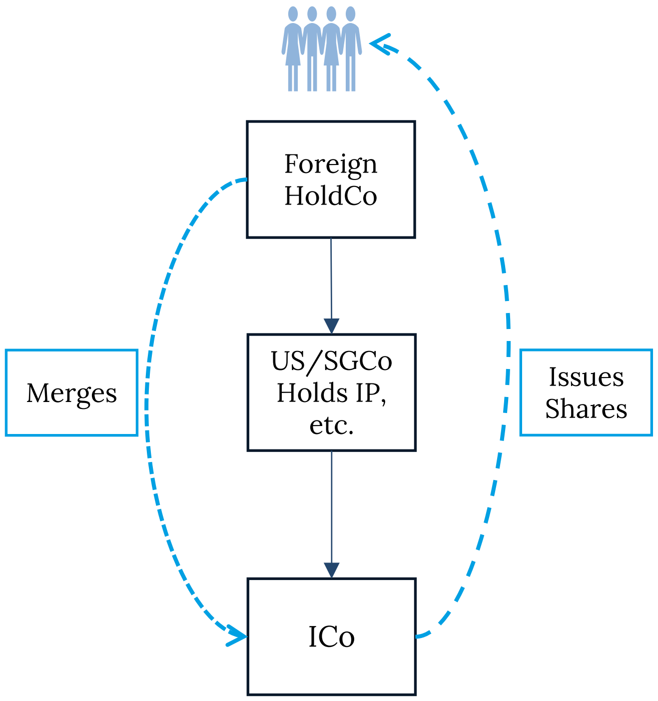
PART 03 | CROSS-BORDER RESTRUCTURING

Reverse Flipping

Internalisation of Holding Structures & Cross-Border Mergers

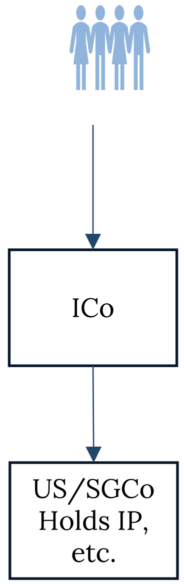
Reverse flipping/ Internalisation – Cross border merger

Facts	***The Issue***



NCLT Route: 9-12 Months

Fast-track Route: 3-4 Months



Resultant Structure

Regulatory implications

- Inbound merger is possible under both NCLT/ fast track route
- Merger to be compliant with NDI & ODI regulations, including pricing guidelines, entry routes, and sectoral caps
- Government approval - If shareholders are based in countries which share a land border with India

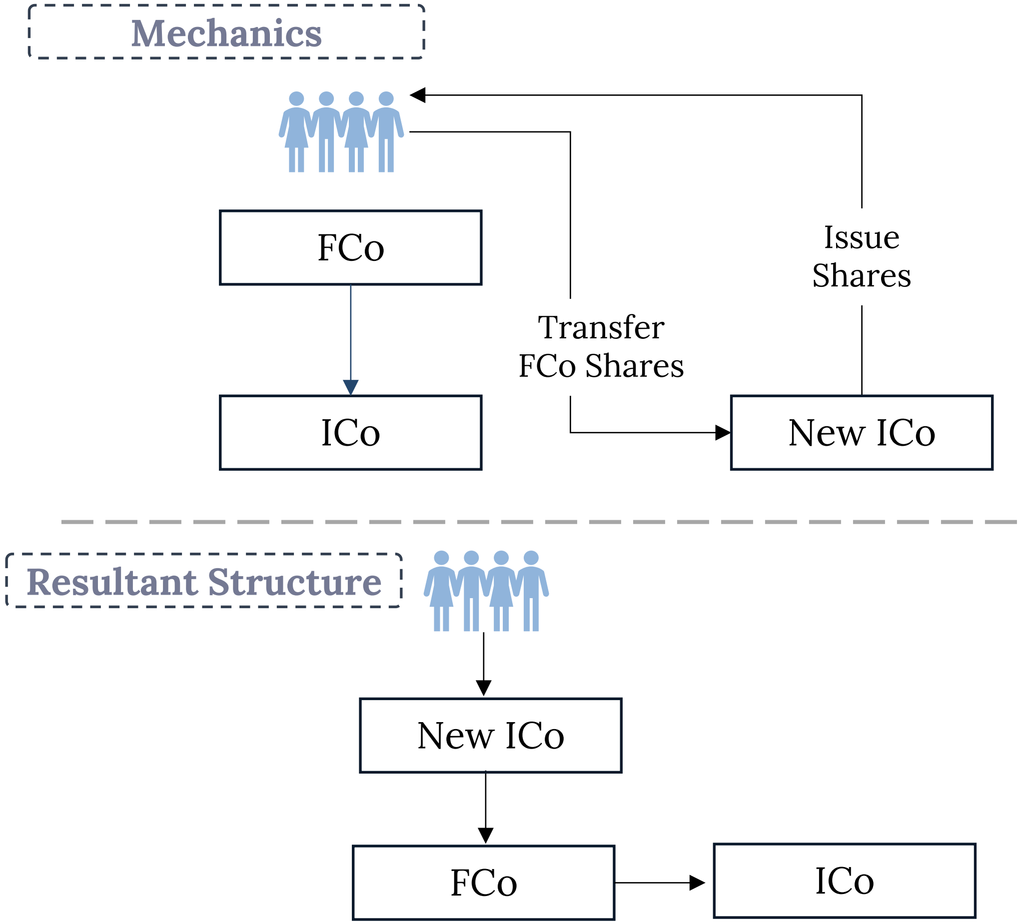
Tax implications

- No adverse tax implications on merger in India
- Plausible tax implications in the hands of non-resident shareholders in the resident country
- 'Exit tax' maybe payable in foreign jurisdiction by F Co
- Losses of I Co may lapse due to a change in shareholding – Registered owner v. Beneficial owner

Effective cash reserves repatriation of F Co. to I Co. + IP Company under ICo

Reverse flipping/ Internalisation – Share swap

Facts	***The Issue***



Regulatory implications

- Share swap to be compliant with FDI regulations, including pricing guidelines
- To be compliant with permissible limits under ODI regulations: upto 400% of net worth of I Co.
- Government approval - If shareholders are based in countries which share a land border with India

Tax implications

- Capital gain implications in the hands of non-resident shareholders on transfer of shares of F Co to I Co. Evaluation required for:
  - Trigger of Offshore Indirect transfer i.e. F Co derives substantial value from India?
  - Relief if any available under tax treaty?
  - Grandfathering under applicable tax treaty

What happens to the shares of I. Co. which were held by F. Co.?

Reverse Flip/Internalization

Zepto completes reverse flip from Singapore to India

Razorpay completes reverse flip to India, pays $150m for strategic homecoming

Dream Sports does an express flipback; among first to reverse merge sans NCLT nod

Pine Labs Gets Final NCLT Nod For Reverse Flipping To India

Groww's $160 Million Delaware Tax Bill Became India's Most Expensive Startup Lesson in reverse flip

PART 04 | CORPORATE RESTRUCTURING

Demergers

Definition, Tax Implications & Carry Forward of Losses

Demerger - Definition

Section 2(19AA) – *'transfer pursuant to a <u>scheme of arrangement u/s 230 to 232 of the Companies Act</u>'*

Transfer of all assets & liabilities

All assets & liabilities pertaining to the Demerged Undertaking are transferred to the Resulting Co.

Transferred at Book Values

Any revaluations to be ignored

Resulting Co. issues shares

Resulting Co. issues shares to the shareholders of the Demerged Co., on a proportionate basis

$3/4^{th}$ Shareholders Continue

Atleast $3/4^{th}$ shareholders (in value) of the Demerged Co. become the shareholders of the Resulting Co.

'Undertaking' & 'Going Concern'

Demerged Co. transfers an 'undertaking' on a 'going concern' basis to the Resulting Co.

Demerger – Tax Implications

Sec. 47(vib)

In hands of Demerged Co.

- Resulting Co. is an **Indian Co.**
- Applies only to inbound demergers

Sec. 47(vid)

In hands of Shareholders

Transfer or issue of shares by the Resulting Co. to the shareholders of the Demerged Co.

Sec. 56(2)(x)

In hands of Resulting Co. & Shareholders

Specific exclusion provided

Fast-track demergers not to be eligible for tax neutrality – as clarified by MoF

Demerger – Tax Implications

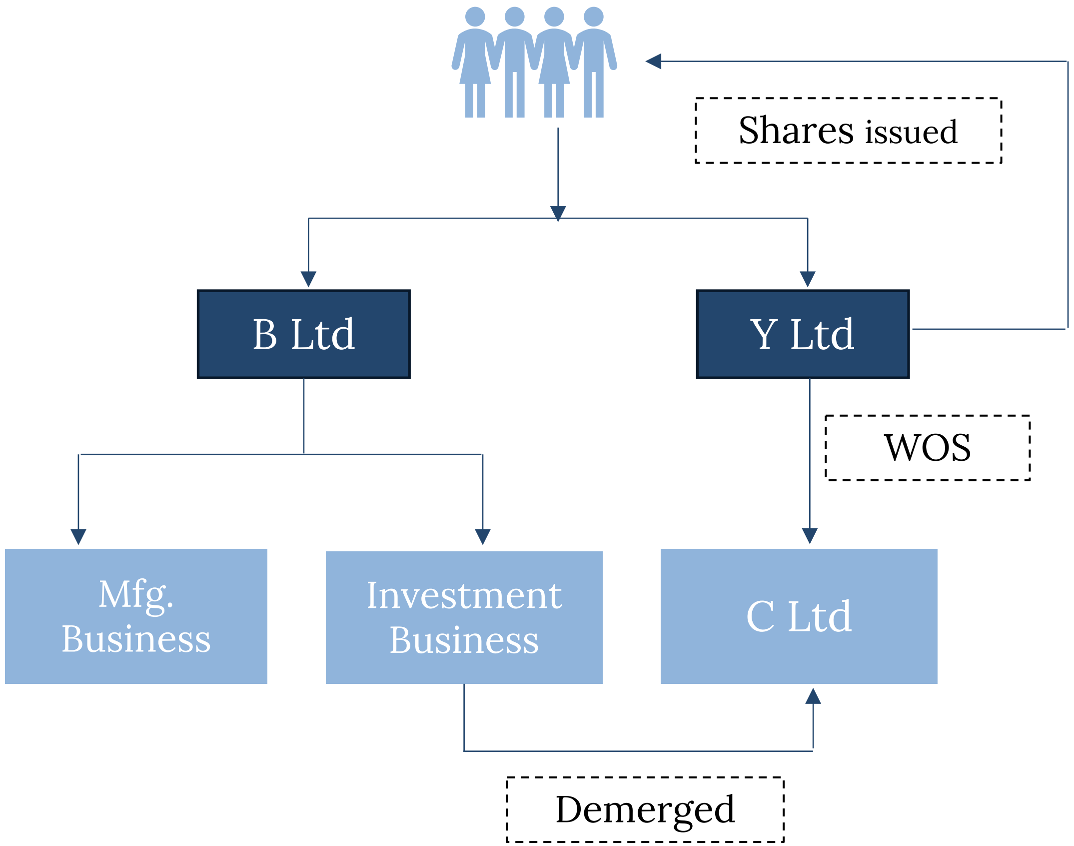
- Period of Holding – Section 2(42A)
  - From the date of holding shares of the Demerged Co.

- Cost of Acquisition of shares of the Resulting Co. – Section 49(2C)
  - Cost of acquisition of shares of the Demerged Co., proportionate to the net book value of assets transferred
  - Net Book value of the assets is negative ?

- Depreciation – Fifth Proviso to Sec. 32 – Available on WDV of assets transferred, on time basis

‘Undertaking’ & ‘Going Concern’ – *A litigation trap*

Facts	***The Issue***

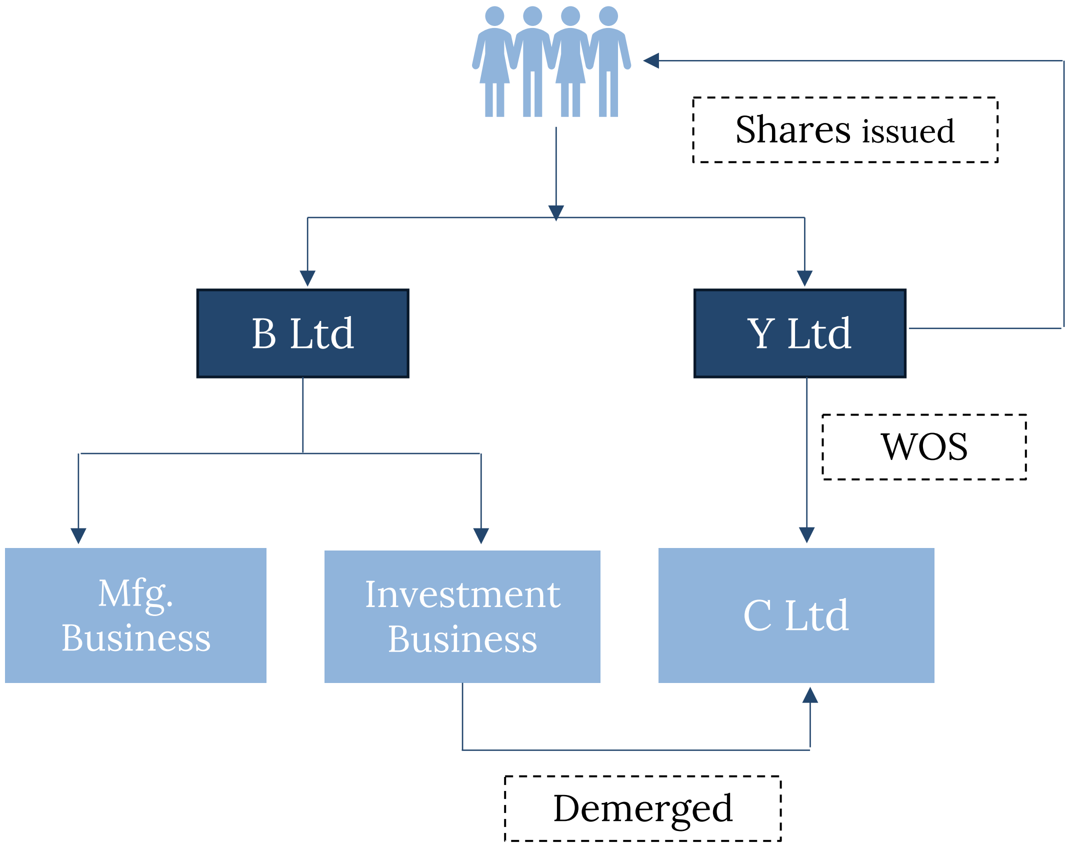


Whether ‘investment’ business constitutes as ‘undertaking’

- Favourable – Mumbai ITAT in case of Grasim Industries Limited (2022)
- Against – Ahmedabad ITAT in case of Reckitt Benckiser Healthcare India Private Limited v DCIT (2025), also held liabilities to be transferred to reduce risk of itemized sale
- Substance over form – entire undertaking transferred except land
  - Mahindra Engineering & Chemical Products Ltd. v. ITO [2012]

‘Resulting Company’ – Sec. 2(41A)

Facts	***The Issue***



Whether Hold Co. issuing shares for demerged undertaking received by subsidiary satisfies Sec. 2(19AA)?

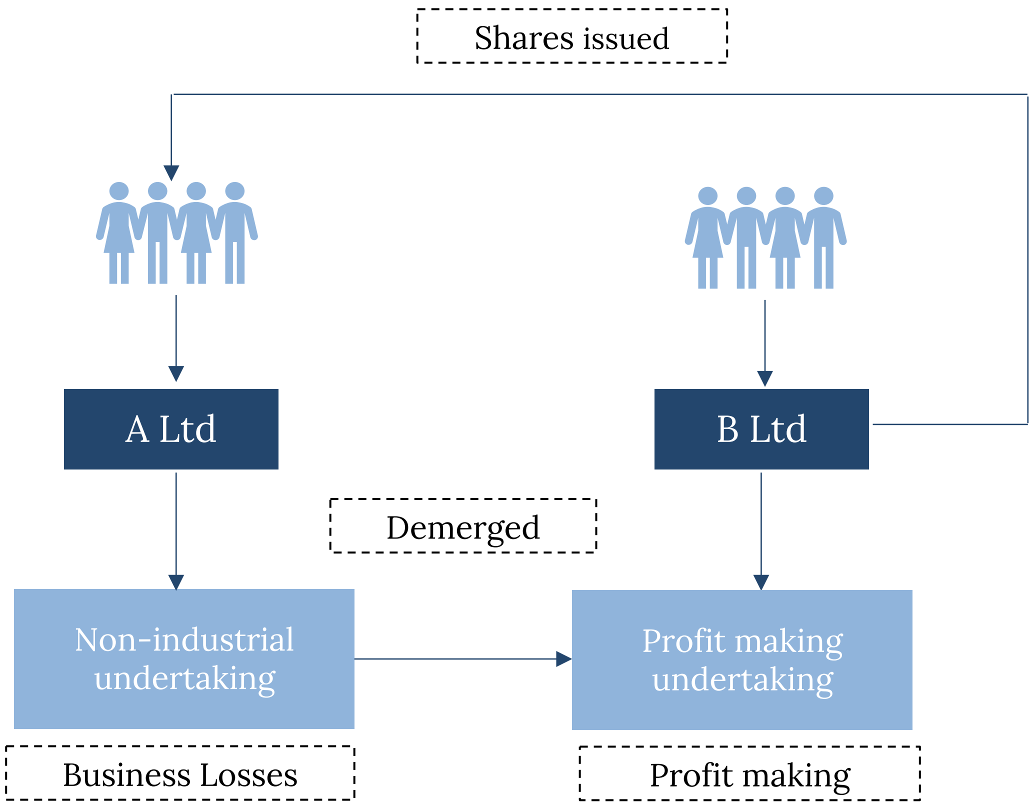
- Resulting Company defined as
  - *“**<u>one or more companies (including a wholly owned subsidiary thereof)</u>** to which the undertaking of the demerged company is transferred in a demerger and, **<u>the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders</u>** of the demerged company…”*
- Who is the Resulting Co.?
  - C Ltd is the transferee Co. while the shares are issued by its Hold Co. Y Ltd
- Whether conditions u/s 2(19AA) r.w. 2(41A) fulfilled ?
  - Held no – Mumbai ITAT in the case of Sterling Holiday Resorts Ltd. ITA No. 843/Mum/2024 (2026)
- NCLT sanctions schemes involving this structure
  - GlobeOp Financial Services (India) Pvt. Ltd. & Ors. (Company Petition No. 641 of 2014)
  - Reckitt Benckiser (India) Pvt. Ltd. Scheme

Carry Forward of Losses – Section 72A(4)

- **Section 72A(4)**
  - Losses directly attributable to the Demerged Undertaking can be carried forward by the Resulting Co.
  - Losses not directly attributable – to be carried forward in proportion to assets transferred to the Resulting Co.
  - No conditions attached as in case of Amalgamation
- Unlike amalgamations, losses were always allowed to be carried forward only for the balance period (out of 8 years)
- Whether inter-head set off in the year of demerger –
  - Unlike Sec. 72A(1), sec. 72A(4) does not provide that **'losses shall be treated as the losses for the previous year in which the amalgamation was effected'**
- Carry forward of Capital losses? – Similar as discussed in case of amalgamations
- Section 79 – Losses of Resulting Co. shall lapse if shareholding of Resulting Co. changes by >51%

Carry Forward of Losses – Merger v. Demerger

Facts



The Issue

Since A Ltd. Demerges its only undertaking, can it qualify as a demerger?

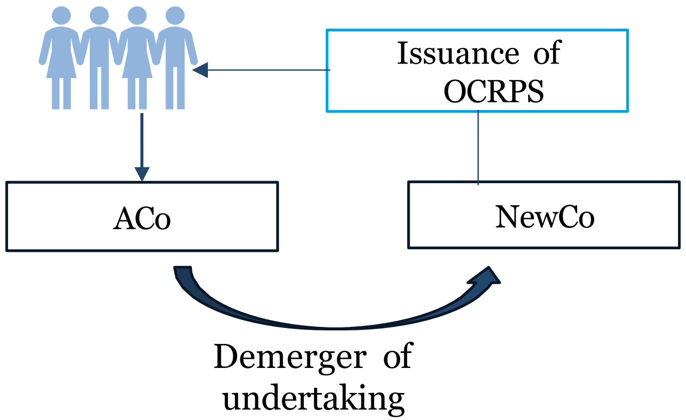
- Going concern test to be satisfied for demerged co. as well as demerged undertaking
  - Yes – Held in case of Yallamma Cotton, Woollen and Silk Mills Co. Ltd., In re [[1970] 40 Comp Cas 466]
- A Ltd does not qualify for carrying forward losses in merger [Sec. 72A(1)]
- If B Ltd. Merges in A Ltd. – Losses lapse [Sec. 79]
- A Ltd. Demerges its only undertaking to B Ltd.
  - No conditions for carry forward of losses in case of demerger
  - Sec. 79 does not get triggered

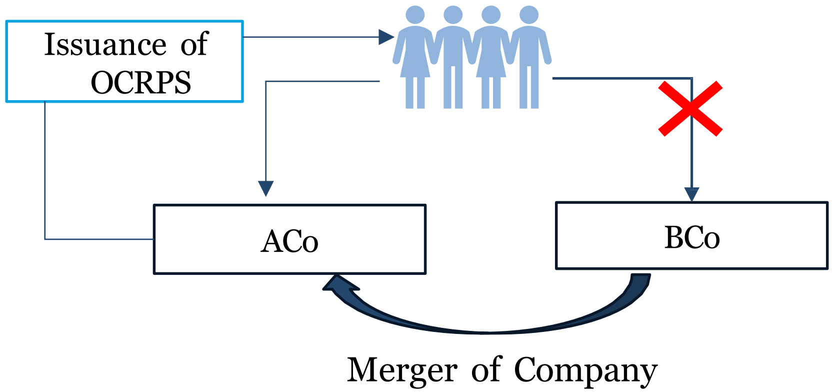
– GAAR applicability? – Central Govt. has not notified any conditions u/s 72A(5) to verify genuineness of demerger

– Whether tax authorities would contend to treat this as a slump sale?

Repatriation in Business Reorganizations

Facts	The Issue



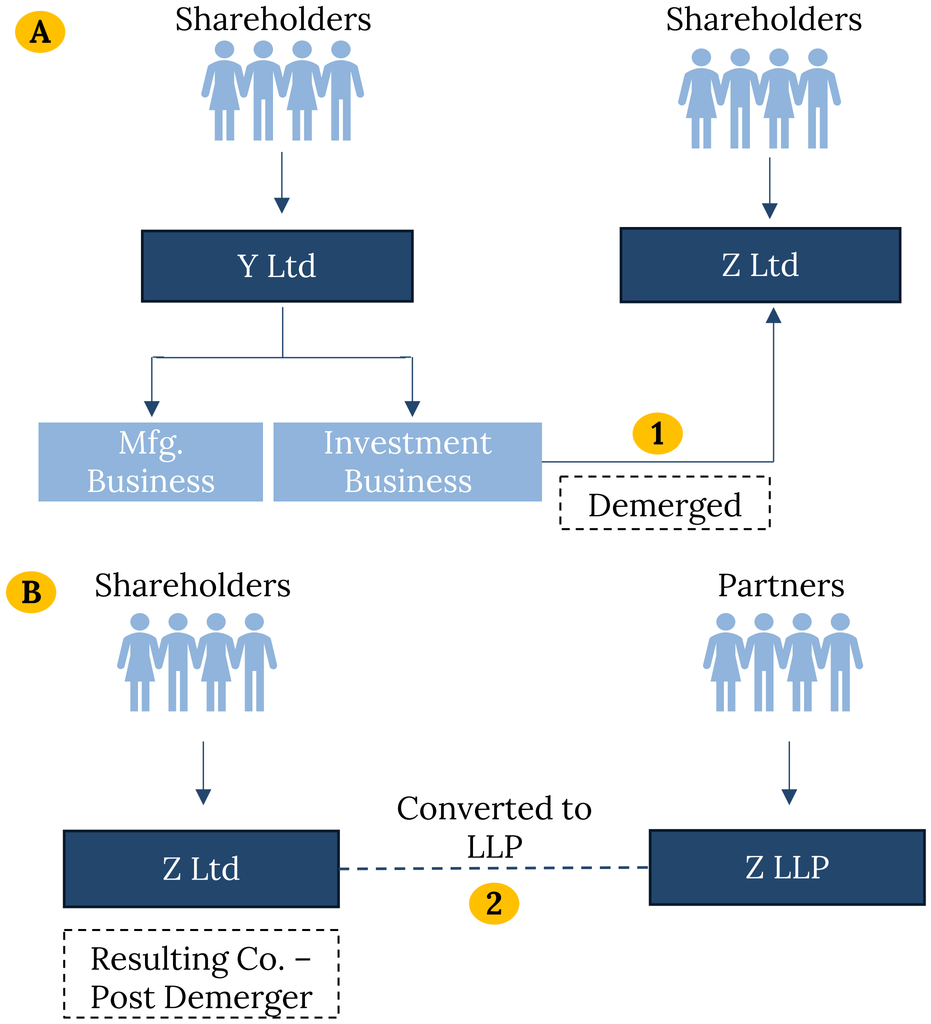


- Consideration for merger/demerger issued in the form of RPS / OCRPS
  - Continues to be tax neutral – 'shares' includes preference shares
- Enhanced flexibility
  - Companies to proceed for listing
  - At the time of fundraising
  - Mergers where profits contingent upon future performances
- Conversion into equity shares
  - Conversion into equity shares – tax neutral
- ***Redemption taxed as dividend or capital gains ?***

- ***Issuance of RPS / OCRPS in case of Non-resident shareholders ?***
- ***Applicability of ECB regulations?***

Repatriation through Conversion – Co. to LLP (1/2)

Facts	***The Issue***

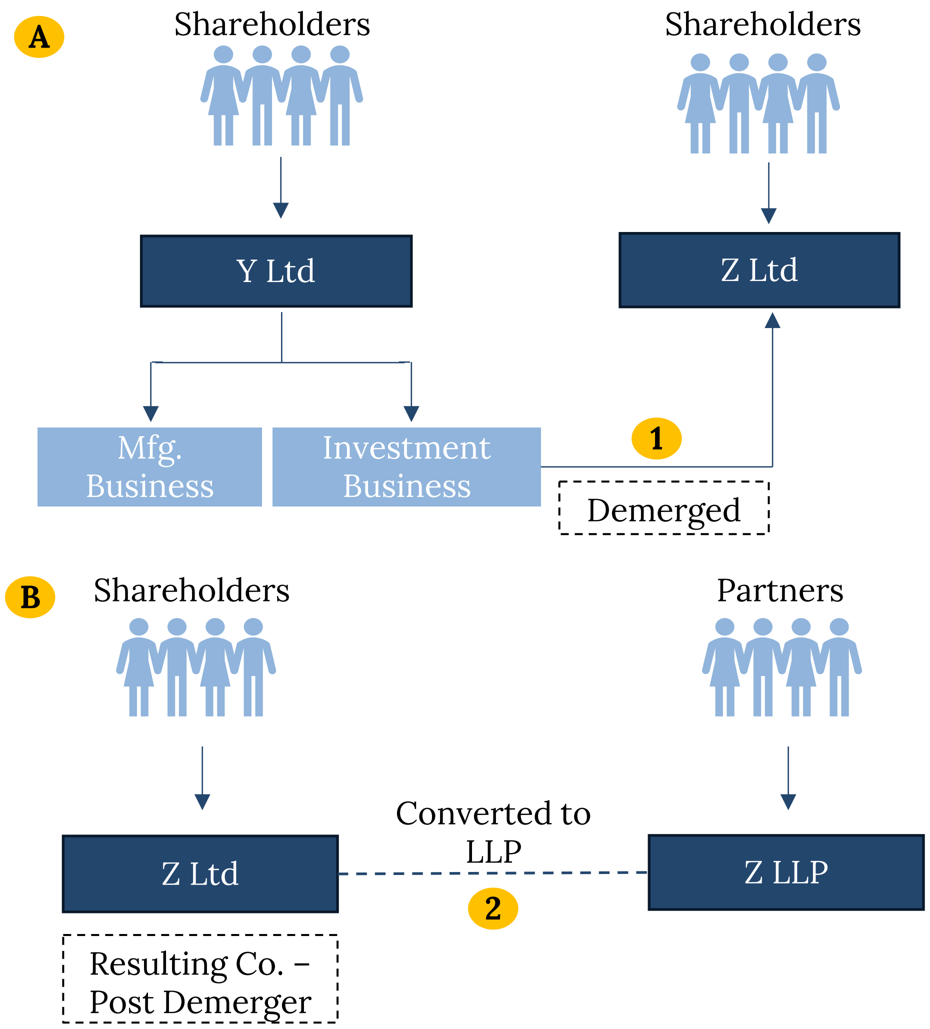


Conversion of Co. to LLP – not regarded as 'transfer'

- Sec. 47(xiiib) conditions *inter alia* includes
  - Sales or T/o < 60 Lakhs (in any of 3 preceding years)
  - Total value of assets < 5 crores (in any of 3 preceding years)
  - Balance out of accumulated profits shall not be paid for a period of 3 years from the date of conversion
- Profits on sale of investments
  - Held as LTCG – taxed at 12.5% for LLP as well as Co.
  - Held as STCG – taxed at applicable rates
- Repatriation to the shareholders or partners
  - Dividend v. profit distribution from LLP

Repatriation through Conversion – Co. to LLP (1/2)

Facts

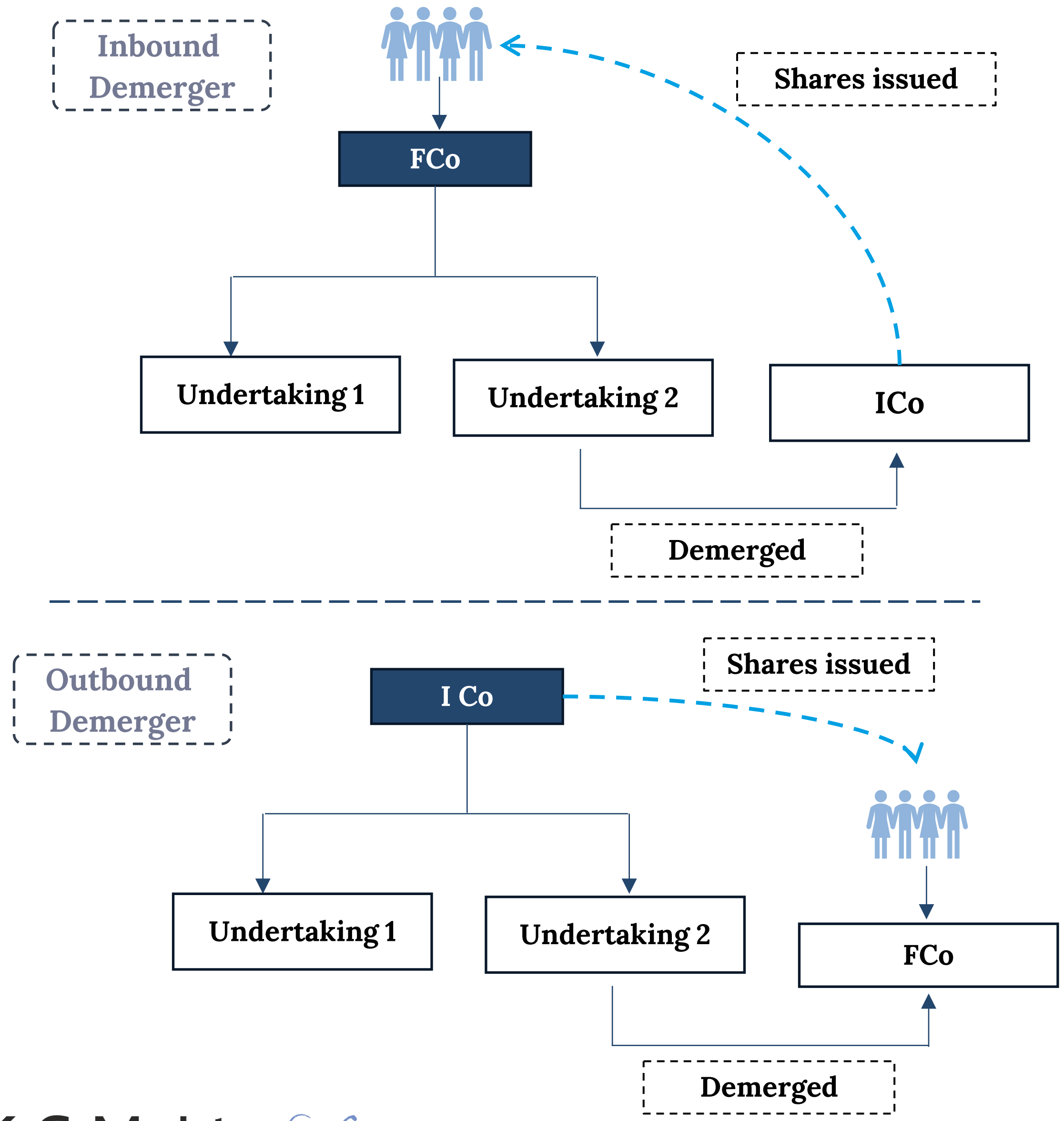


The Issue

Tax neutrality vitiated if conditions u/s 47(xiiib) not met?

- Not regarded as transfer – in the hands of the Company
  - Conditions are out of abundant caution - [CIT v. Madurai Mills [1973] 89 ITR 45 (SC)]
  - Statutory vesting of assets & liabilities – not transfer - [CIT v. Texspin Engg. & Mfg Works [2003] 263 ITR 345 (BOM);
- Regarded as transfer – in the hands of the Company & carry forward of losses denied
  - Celerity Power LLP [TS-684-ITAT-2018(Mum)]
- In the hands of the shareholder
  - Taxable - Domino Printing Science Plc [TS-5005-AAR-2020-O]
- Treaty grandfathering benefits may be available for NR shareholders

Cross-Border Demergers – Legal validity in India



The Landmark – Sun Pharmaceuticals NCLT Ruling

- **Inbound Demerger [2018]**
  - Demerger of an undertaking of F Co into an I Co.
  - Was permitted by NCLT, In re (2018) (Sun Pharma Global FZE undertaking to Sun Pharmaceutical Industries Ltd.).
  - All benefits of tax neutrality would be available.
- **Outbound Demerger [2019]**
  - Was rejected by NCLT in Sun Pharmaceutical Industries Ltd., In re (2019)
    - On the ground that sec. 234 of the Cos. Act permits only cross-border mergers and does not include demergers
- Both rulings, 2 contrasting positions – irregularities in NCLT's rationale for permitting one scheme and disregarding the other

PART 05 | BUSINESS TRANSFERS

Slump Sale

Definition, Tax Implications & Repatriation Strategies

Slump Sale - Definition

- Slump Sale as defined u/s 2(42C) / 2(103) of the ITA 1961
  - Transfer of one or more undertakings
  - For a lump sum consideration
  - Without assigning values to individual assets & liabilities

- Slump sale as well as slump exchange covered
  - Finance Act 2021 amended – Bombay HC ruling in case of CIT v. Bharat Bijlee Ltd. reversed

- ‘Undertaking’ as defined u/s 2(19AA) / 2(35)

Slump Sale – Tax Implications

- Slump Sale is a taxable 'transfer' as per Sec. 50B
  - Full Value of Consideration (Rule 11UAE) – Higher of FMV of Actual consideration or FMV as per Rule 11UAE / Rule 53 of ITR 2026
  - Cost of acquisition – Net worth of the undertaking
  - Period of holding of 'undertaking' to be considered and not individual assets & liabilities?
    - Yes - CIT v. Equinox Solution (P) Ltd [2017] 80 taxmann.com 277/247 Taxman 89/393 ITR 566 (SC)
  - Capital Asset – LT is held > 36 months, else ST
  - If LTCG – Taxed at 12.5% + applicable surcharge & cess, STCG – taxed as applicable rates

If Net Worth is negative, to be taken as Nil or to be added to the Sale Consideration ?

- Zuari Industries Ltd v. Asstt. CIT [2007] – to be taken as Nil

- Dy. CIT v. Summit Securities Ltd [2011] – to be added to sale consideration

Slump Sale – Tax Implications

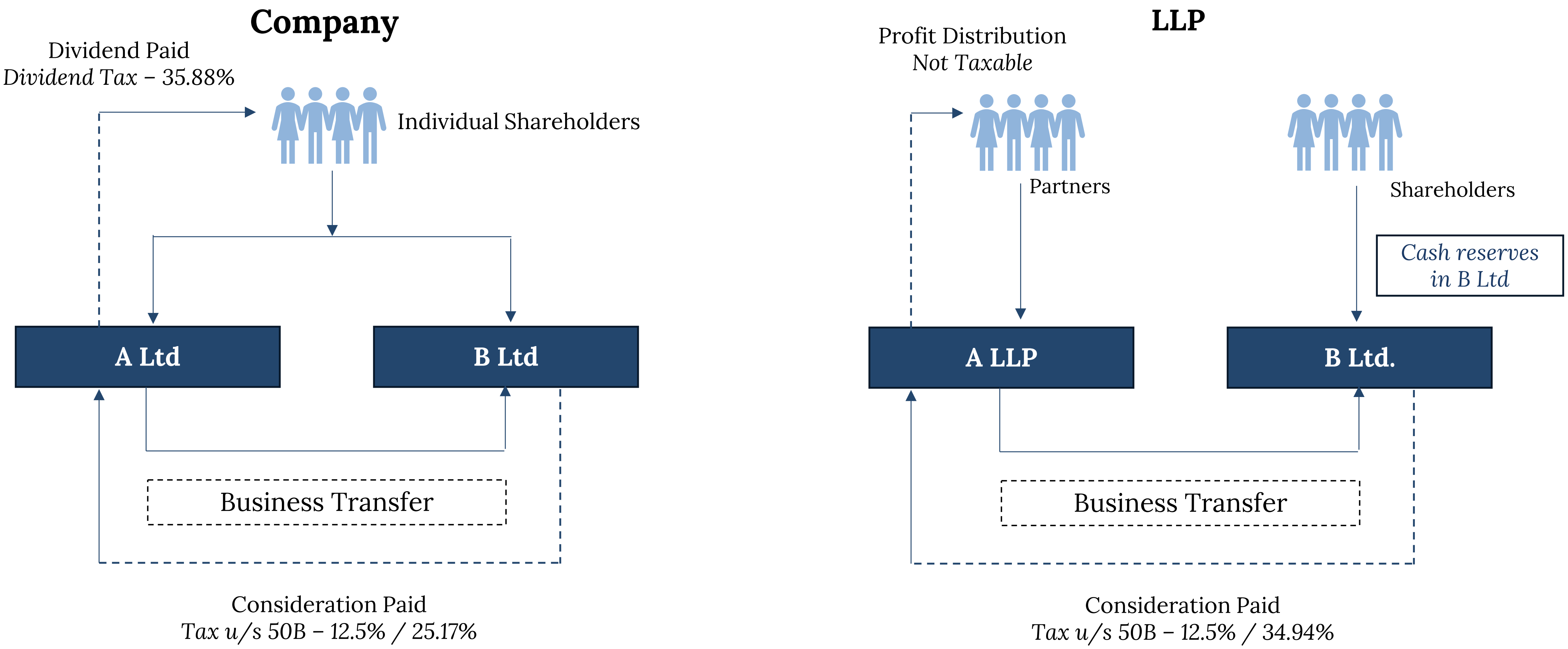
- **Depreciation**
  - **Cost step-up available based on actual cost attributable to acquired asset**
  - **Additional benefit – Depreciation on intangibles recognized under slump sale**

- Possible to claim exemption u/s 54EC/54EE – Threshold of INR 50 Lakhs

- Transfer of 'undertaking' by Hold Co. to WOS or vice-versa
  - Tax neutral in view of Sec. 47(iv) / 47(v) [70(1)(c)/(d)] ?
  - Exemption withdrawn if – subsidiary ceases to be a WOS

- GST not applicable
  - if transferred on going concern basis – not treated as 'supply'

Slump Sale – by Company v. LLP



Significant tax cost saving for repatriation to ultimate owners – No double taxation

Slump Sale – Undertaking, business not commenced

Facts

- A Ltd. is a start-up owns an undertaking, which has not yet commenced business operations
- Undertaking of A Ltd. is transferred to B Ltd. is a start-up registered u/s 80-IAC
- Tax authorities challenged deduction claimed u/s 80-IAC
  - Deduction not available since start-up formed by splitting up or reconstruction of a business in existence

The Issue

Whether deduction available considering that business is formed by way of splitting up or reconstruction of a 'business in existence'

- Business, which has not commenced operations can be treated as a 'business in existence'
- CBDT vide Circular No. 01/2013
  - Clarified that tax benefits u/s 10A/10AA/10B to be available in case of a slump sale
- Mumbai ITAT in case of DCIT vs. Allcargo Logistics Ltd, ITA No. 2046/Mum/2021
  - Held that deduction travels with undertaking & not ownership
- Bombay HC's ruling in case of CIT vs. Sonata Software Ltd
  - Held that transfer of a running business lock, stock and barrel does not amount to reconstruction or splitting up

Share Acquisition | Business Acquisition | Demerger

Parameter	Share Acquisition	Business Acquisition	Demerger
Preference	Seller	Buyer	**Inter-company restructurings**
Mechanics	**Quick – Share Purchase Agreement**	**Quick – Business Transfer Agreement**	Atleast 9-12 months (fast-track not tax neutral hence, not considered)
Consideration	**Shareholders**	Company	**Shareholders**
Tax Implications	Taxable	Taxable – possibility of double taxation	**Tax neutral**
Cost step-up	**Available for shares**	**Available for depreciable assets**	Not available for shares / depreciable assets
Legacy / Risks	Inherited	**Not inherited**	Inherited
Sec. 79	Triggered	**Not applicable**	Triggered for losses of the Resulting Co.
Treaty Grandfathering	**Available**	Not available	**Not applicable if tax neutral**

PART 06 | BUSINESS TRANSFERS

Itemised Sale

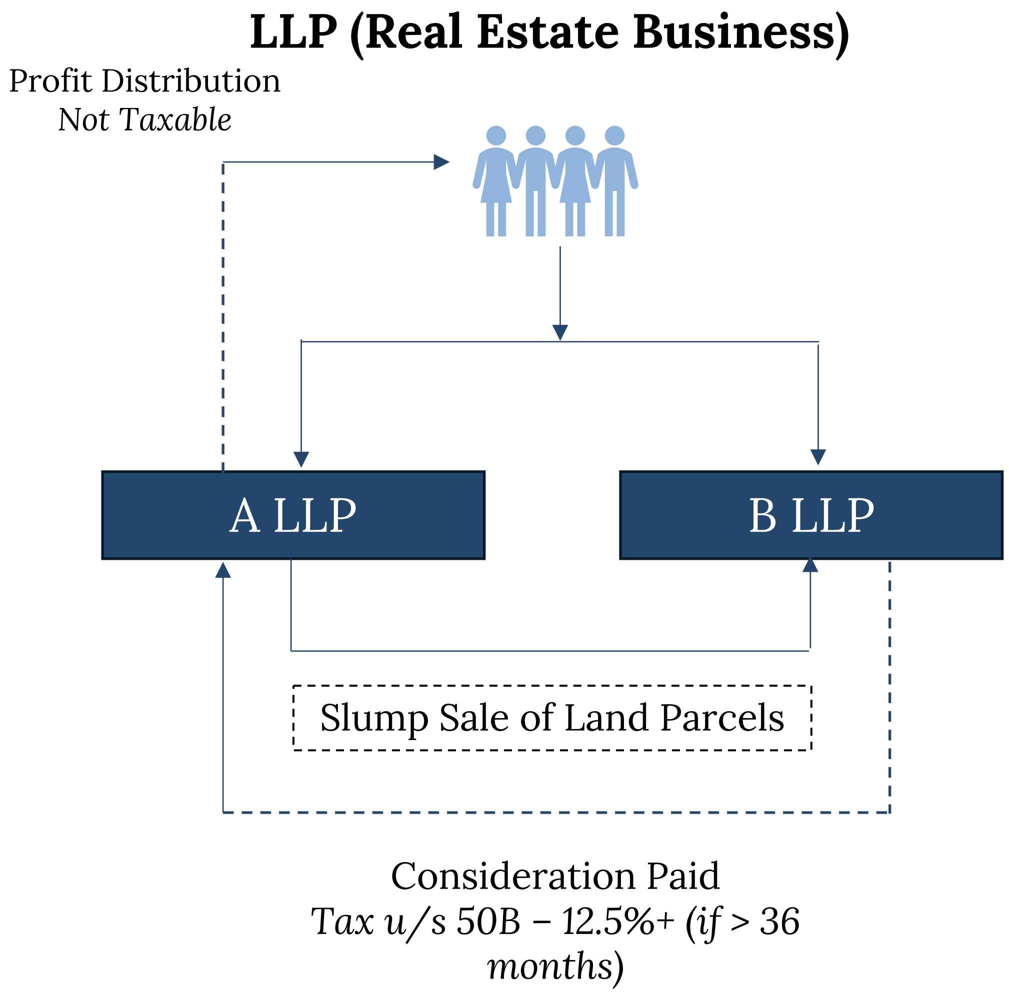
Tax Implications & Comparative Analysis of Restructuring Routes

Itemised Sale – Tax Implications

- Individual sale of assets triggers capital gains tax
  - Computed as per Sec. 45 r.w. sec. 50C / 50CA / 50D, as may be applicable
  - Not regarded as 'transfer' – Sec. 47(iv) / 47(v)
    - Transfer of assets by Hold Co. to WOS or by WOS to Hold Co.
    - Provided Transferee Co. is an Indian Co.
  - Exemption withdrawn if
    - Asset converted into stock-in-trade or subsidiary cease to be WOS
- Sale of depreciable assets – Deemed STCG / STCL
- GST Implications – as per applicable rates
- Stamp Duty
  - Immovable Properties subject to a high rate of stamp duty, applicable as per respective state laws / Indian Stamp Act

Sec. 50 is merely computation mechanism for depreciable assets & hence, for rate purpose can be treated as LTCA?

Slump Sale v. Itemised Sale



- A Company / LLP engaged in real estate business
  - Has land parcels held for > 36 months as well as < 24 months
- Whether slump sale or itemised sale beneficial?
  - Short-term land parcels subsumed with long-term
  - If undertaking older than 36 months
  - Entire gain taxed at 12.5%
  - If itemised sale – STCG on land would be taxed at 34.94%
- If 50B valuation is attributable to Land value appreciation
  - Would itemised sale of land separate of rest of the undertaking be more beneficial?

Business Reorganizations through GAAR Lens

- Any restructuring or reorganization arrangement may go through GAAR lens
  - Main object should not be that of tax avoidance
  - Arrangements prior to 1 April 2017 are grandfathered
  - NA if tax benefit < INR 3 crores
    - To be seen collectively for all persons and all years
  - The onus is on the Assessee to prove it otherwise – Sec. 96(2)
- Tax benefit may be incidental

- SC ruling in case of McDowell & Co. v. CTO (1985)
  - Judgment reshaped the legal approach to tax avoidance and laid the ideological groundwork for the introduction of the General Anti-Avoidance Rule (GAAR)
  - JAAR was invoked before GAAR existed in the law

Business Reorganizations through GAAR Lens

- CBDT Notifications dated 31 March 2026 – Amending Rule 128 of IT Rules 1962
  - Follows SC ruling in case of AAR v. Tiger Global International II Holdings (January 2026)
  - The amendments restore the grandfathering benefit
    - by expressly providing that GAAR shall not apply to investments made before 1 April 2017, even if they are transferred after that date.
  - This also ensures protection for pending proceedings under the repeal and savings provisions.

PART 06 | BUSINESS TRANSFERS

Some Interesting Situations

Merger / Demerger as Non-Tax Strategy

Interesting Use of Merger / Demergers

- listed and unlisted Company mergers
  - 25% Vs 10% public shareholding and leveraging synergistic benefit
  - Issuance of OCRPS and De-listing it

- Exit to Small Shareholders
  - Fractional Shares – Encashment
  - OCRPS / RPS and redemption

- Exit to Group using Internal Cash and Future Cash Flows of Entity
  - OCRPS

Section References – ITA 1961 vis-à-vis ITA 2025

ITA 1961	ITA 2025
2(1B)	2(6)
2(19AA)	2(35)
2(41A)	2(97)
2(42A)	2(101)
2(42C)	2(103)
28	26
32	33
47(iv)	70(c)
47(v)	70(d)
47(vi)	70(e)
47(vii)	70(f)
47(vib)	70(j)
47(vid)	70(k)
47(xiib)	70(ze)

ITA 1961	ITA 2025
49(2)	73(1)
49(2C)	73(1)
50B	77
50C	78
50CA	79
50D	80
54EC	85
54EE	-
56(2)(x)	92(2)(m)
72A(1)	116(1)
72A(4)	116(6)
72A(5)	116(7)
79	119

Milin Mehta

milin.mehta@kcmehta.com

+91 9824000926

Thank you

Vadodara
Meghdhanush, Race Course,
Alkapuri, Vadodara – 390 007
Phone: +91 265 2440400
Email: milin.mehta@kslnetwork.in

Ahmedabad
Level 11, Tower B, Ratnaakar Nine Square,
Vastrapur, Ahmedabad – 380 015
Phone: +91 794910 2200v

Bengaluru
K M K Towers, 2nd Floor, No. 142 K H Road (Double Road), Bengaluru – 560 027
Phone: 080 41240545/41270545

Rudra Chambers, First floor, #95, 11th Cross, 4th Main road, Malleswaram, Bengaluru – 560 003
Phone: +91 80 2356 1880

No E-437, Brigade Panorama, Mysuru Main Road,
Kambipura, Anchepalya, Bengaluru
Phone: 080 41132125

Visakhapatnam
D.No. 11-9-28, Plot No.62, Dasapalla Hills
Vishakhapattnam – 530 003

Chennai
Guna Complex, No.443 & 445,4th Floor, Main Building,
Anna Salai, Teynampet, Chennai - 600 018
Phone: +91 44 28251140
Email: sanjeev.aditya@kslnetwork.in

Coonoor
Malita Cottage, No:87, Figure of 8 Road,
Near Shanthi Engineering, Bedford,
Coonoor – 643 101
Phone: +91 423 2230422

Kochi
No. 32/902A, Dwaraka, Kalavath Road,
Palarivattom, Kochi – 682 025
Phone: +91 7034455333

Thiruvananthapuram
TC 25/434, 44 Santhi Nagar
Near Housing Board Junction, T
hiruvananthapuram – 695 001
Phone: +91 471 2333053

Coimbatore
1st Floor, SSS Towers, No 432, Mettupalayam Rd,
Near Hotel Sree Annapoorna,
Vadakovai, Coimbatore – 641 043
Phone: +91 422 2433627/2440720

Hyderabad
4, 6-3-569, Shaheen Estate, Khairatabad,
Somajiguda, Hyderabad – 500 082
Phone: +91 40 2324 0700 / 2324 0900
Email: dayaniwas.sharma@kslnetwork.in

Mumbai
315, The Summit Business Bay,
Nr. WEH Metro Station,
Andheri East, Mumbai – 400 069
Phone: + 91 22 2612 5834

24/402, Godavari, Adarsh Nagar, Near Century Bazar,
Prabhadevi, Mumbai

Unit No.2A1, Gundecha Onclave Kherani Road,
Saki Naka, Andheri (East), Mumbai – 400 072
Phone: +91 7667401771

Madurai
1st Floor, Vishvaa Towers, Sathyamoorthy Road,
70 Feet Road, Ellis Nagar,
Madhurai – 625 016
Phone: +91 452 4366004, 2692634

Mysuru
141, Amrutkunj Ram Vilas Road,
Mysuru – 570 004
Phone: +91 - 0821 - 4280198

K C Mehta & Co LLP
Chartered Accountants

KSL NETWORK